IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.606 /2005

Reserved on.18.5.2007

Decided on.14.6.2007

Sudhir Kumar **…Petitioner.**

Versus

National Hydroelectric Power Corporation Limited and others.

…Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner : **Mr.K.D. Sood, Advocate**

For the respondents No.1 to 3 **Mr. K.D. Shreedhar, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that a post of Junior Engineer (Civil) Grade-II was advertised in the pay scale of Rs. 2900-5140 on 8/14.1.2000. The petitioner submitted his application in the prescribed proforma and was called for interview vide communication dated 27.1.2001. He was offered the post of Junior Engineer on 30.4.2001. He joined his duties in the Baira Siul Power Station at Surangani, District Chamba on 11.5.2001. The post of Trainee Engineer (Civil) was advertised by the respondent-corporation. In sequel to the advertisement he applied for the post of Trainee Engineer (Civil). He had also submitted his bio-data in the prescribed proforma before being subjected to written test. He appeared in the written test on 1.12.2002 and was called for interview on 21.8.2003. He appeared before

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

the interview board on 15.10.2003 and was offered appointment vide letter dated 19.2.2004. He submitted his joining report as Trainee Engineer on 10.3.2004 after tendering his technical resignation on 2.3.2003. He received notice dated 16.3.2004 to the effect that he had not disclosed that he had obtained degree in Civil Engineer at the time of seeking employment as Junior Engineer (Civil). This act of not disclosing the higher qualification was viewed as breach of Clause –IV of offer of appointment for the post of Junior Engineer. He submitted his reply to the show cause notice on 18th March, 2004 and had categorically stated that when he had applied for the post of Junior Engineer (Civil) he did not have the certificate of AMIE and even at the time of interview as well as joining, the certificate was not in his possession. Thus he submitted the certificate of diploma only.

The respondents not satisfied with the reply furnished by the petitioner served him with a charge-sheet for allegedly having not disclosed the factum of degree in Civil Engineering from AMIE at the time of applying for the post of Junior Engineer (Civil). The Inquiry Officer has given the benefit of doubt to the petitioner and concluded that he had not suppressed higher qualification willfully/intentionally as such charges where not proved fully. The disciplinary authority despite the findings recorded by the Inquiry Officer in favour of the petitioner imposed the penalty of 'censure' on 11.11.2004. The disciplinary authority had concluded in para 7 that the petitioner had not willfully and intentionally suppressed the information of acquiring the higher qualification which was required to be disclosed at the time of joining the corporation but still penalty of censure has been imposed. The petitioner had submitted representation to the Chairman and Managing Director of the corporation on 25.11.2004 permitting him to join the post of Trainee Engineer (Civil).

His representation was rejected and the same was conveyed to him on 1st March, 2005.

Mr. K.D. Sood, Advocate appearing on behalf of the petitioner strenuously argued that the petitioner had not suppressed any information from the respondent-corporation at the time of submission of his application which led to his appointment to the post of Junior Engineer (Civil) on 30.4.2001. He then submitted that the Inquiry Officer had absolved him of all the charges and despite that, penalty of censure has been imposed upon the petitioner and the representation made by him has been arbitrarily rejected.

Mr. K.D. Shreedhar, Advocate appearing on behalf of the respondent-corporation had supported the decision of the management of not permitting the petitioner to join his duties of the post of Trainee Engineer (Civil).

I have heard the learned counsels for the parties and perused the record.

The petitioner had submitted his application in the prescribed proforma pursuant to which he was called for interview to the post of Junior Engineer (Civil). He was offered appointment to the post of Junior Engineer (Civil) on 30.4.2001 pursuant to which he joined his duties on 1.5.2001. The post of Trainee Engineer (Civil) had been advertised and the petitioner had submitted his application. The application of the petitioner had been processed by the Corporation pursuant to which he was permitted to sit in the examination held on 1.12.2001 and he was interviewed on 21.8.2003. The appointment letter was issued in his favour on 19.2.2004. Despite the application of the petitioner being processed which led to the appointment letter, the Corporation served the petitioner with a charge-sheet. The Inquiry Officer (Sh. Vikram Singh, Manager)

(ECS & PHOS) had absolved him. The Inquiry Officer had categorically concluded that the petitioner had not suppressed the higher qualification willfully/intentionally. The disciplinary authority had also concluded that the petitioner had not concealed or suppressed his higher qualification intentionally despite that penalty of censure has been imposed. The imposition of penalty of censure after the inquiry report had gone in favour of the petitioner and the disciplinary authority himself had come to the conclusion that there was no suppression of information, was unwarranted. The petitioner in these circumstances was required to be permitted to join his duties of the post of Trainee Engineer (Civil). The representation made by the petitioner has also been rejected in an arbitrary manner without a speaking order.

The contention of Mr. K.D. Shreedhar, Advocate appearing on behalf of respondent-corporation that the petitioner was required to challenge Annexure R-1 dated 19th July, 2000 is untenable. The Inquiry Officer was aware of the issuance of Annexure R-1 and on the basis of the material produced during the course of inquiry he had absolved the petitioner. The stand of the petitioner at the time of issuance of show cause notice was also that he was not in possession of the certificate at the time of submission of application for the post of Junior Engineer (Civil).

The present case can also be viewed from another angle. The petitioner had submitted his application along with bio-data which was processed by the corporation pursuant to which he had been offered appointment letter and after issuing the appointment letter, the corporation is estopped from not permitting the petitioner to join his duties.

The Apex Court in ***Asha Kaul (Mrs) and another Vs. State of Jammu and Kashmir and others***, (1993) 2 SCC 573 has held as under:

> **"It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to**

appointment (State of Haryana v. Subhash Chander Marwaha; Mani Subrat Jain v. State of Haryana; State of Kerala v. A Lakshmikutty) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, - in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government – the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in *Shankarsam Dash Vs Union of India* where the earlier decisions of this Court are also noted. The following observations of the Court are apposite: (SCC pp.50-51, para 7):

> **"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bone fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find**

any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla Vs. State of Haryana or Jatendra Kumar Vs. State of Punjab."

The petitioner had been absolved by the Inquiry Officer and despite that the penalty of censure has been imposed upon him. It was a case where no notice was required to be issued to the petitioner at all since the higher qualification cannot become a disqualification for public employment. The Hon'ble Supreme Court has held in ***Y. Srinivasa Rao Vs. J. Veeraiah and others,*** AIR 1993 SC 929 as under:

"The decision to prefer an uneducated person over an education person amounts to allowing premium on ignorance, incompetence and consequently inefficiency. The only fault of the appellant is to have perused his studies beyond 10th Class of his school. If he had discontinued his career as a student even earlier, say after passing 7th or 8th Class, he would have been running the shop today. This clearly amounts to gross arbitrariness and, therefore, illegal discrimination. Pursuing this line the State will have to be going in search of a more inefficient person and we do not know where this process would end. If we assume that since a better qualified person has got a better chance to succeed in life, an intelligent applicant who can run the shop efficiently should be rejected and a dim witted fellow should be selected. This is an absurd situation."

The Apex Court has held in A***.P.Aggarwal Vs. Government of NCT of Delhi and another***, (2001) 1 SCC 600 as under:

"**In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise**

of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14.5.1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us (vide Shrilekha Vidyarathi v. State of H.P.).”

The upshot of the discussion is that the action of the respondents-corporation of not permitting the petitioner to join the duties of the post of Trainee Engineer (Civil) is arbitrary.

Accordingly the writ petition is allowed. The Annexures P-14 and P-16 are quashed and set aside. The writ in the nature of mandamus is

issued to the respondents to permit the petitioner to join his duties as Trainee Engineer (Civil) pursuant to Annexure P-8 dated 19.2.2004 with all consequential benefits within a period of two weeks from the date of receipt of copy of this judgment. The petitioner is also held entitled to costs, which are quantified at Rs. 5000/-.

(Rajiv Sharma), Judge

June 14, 2007
Awasthi